Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA495592014
IA495602014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 May 2016	**On 23 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

[O O]
[D O]
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms C. Hulse, Counsel instructed by A & A Solicitors
For the Respondent: Ms A Brocklesby-Weller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By way of a decision promulgated on 26 February 2016, the decision of the First-tier Tribunal was set aside to be remade.
2. At the resumed hearing I heard oral evidence from the first Appellant, and submissions from both representatives. I was provided with a skeleton

argument by the Ms Hulse. I reserved my decision which I set out below with my reasons.

3. It was submitted by Ms Hulse that the second Appellant met the requirements of paragraph 276ADE(1)(iv). Consequently the first Appellant should be granted leave under Article 8 outside the immigration rules with reference to section 117B(6) of the 2002 Act.

Credibility

4. I found the first Appellant to be an honest and credible witness who answered all questions put to her and was not evasive. I find that the first Appellant's evidence can be relied on. She gave evidence that her mother had had to travel to Nigeria following the unexpected death of her mother's sister. She said that her sister had tried to get the day off work to attend the hearing but had not been able to. Her brother is doing his final exams at Buckingham University. I do not attach any weight to the fact that neither of the first Appellant's siblings were at the hearing, especially given that it has not been submitted that the Appellants' right to remain is based on any family life with the first Appellant's siblings.

Immigration rules

5. The second Appellant's date of birth is [ ] 2007. I therefore find that at the date of the Respondent's decision, 20 November 2014, he was already seven years old. As at the date of the remaking he is just over a month away from his ninth birthday. He has therefore met the first requirement of paragraph 276ADE(1)(iv) which is that he must be under the age of 18 and have lived continuously in the United Kingdom for at least seven years. Additionally he must show that it would not be reasonable to expect him to leave the United Kingdom.

6. In assessing whether it is reasonable to expect the second Appellant to leave the United Kingdom, I have taken into account his best interests. I have taken into account the cases of ZH Tanzania [2011] UKSC 4, and EV Philippines [2014] EWCA Civ 874. Paragraph 35 of EV Philippines provides:

> "A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens."

7. I find that the second Appellant was born in the United Kingdom. His mother, the first Appellant, has been in the United Kingdom since August 2003. She was 16 years old when she came to the United Kingdom to do her A levels. She was studying at university at the time of the second Appellant's birth. The circumstances surrounding the pregnancy and birth of the second Appellant are relevant in establishing the reasonableness of his leaving the United Kingdom. In summary, I find that when the first Appellant became pregnant, her father in Nigeria was not happy and wanted her to have an abortion. Her mother supported the first Appellant in her wish to continue with the pregnancy, and came to the United Kingdom from Nigeria in order to support her. As a result of the first Appellant's mother choosing to support her daughter, the first Appellant's father has nothing more to do with his wife, the first Appellant or his other two children.

8. I find that the first Appellant returned to Nigeria following the birth of the second Appellant in order to try and heal the rift between her father and the rest of the family, but was not able to do so. I find that the family in the United Kingdom do not have any contact with the first Appellant's father. They receive no financial support from him.

9. As the first Appellant was studying at university when the second Appellant was born, the second Appellant was cared for by the first Appellant's mother, his grandmother. I find that the first Appellant finished her university study in September 2010 and therefore, for the first three years of his life, the second Appellant was brought up primarily by his grandmother while his mother continued her studies.

10. I find that the second Appellant has lived with his grandmother, as well as his maternal aunt and uncle, since his birth. I find that his aunt works in Chester but returns to the family home every weekend from Friday to Sunday. His grandmother, aunt and uncle are all British citizens who have settled in the United Kingdom. Owing to the circumstances surrounding the second Appellant's birth, the fact that he was brought up by his grandmother while his mother continued her studies, and the circumstances of the family rift, I find that the second Appellant has a closer relationship with his grandmother than would normally be the case. I find that it is in his best interests to maintain this relationship.

11. I find that the relationship that the first Appellant has with her mother, given the history of the family rift, and given that she is a single mother to the second Appellant, is stronger than would usually be the case between a mother and her adult daughter. I find that the second Appellant's immediate family unit consists of his mother, grandmother, aunt and uncle.

12. In terms of contact with Nigeria, I have found above that the second Appellant's grandfather has no contact with the family. I find that the second Appellant's maternal great-grandmother lives in Nigeria. I find that

his grandmother had one sister who has just died, and she had no children. I find that there is no family in Nigeria, apart from the second Appellant's great grandmother, with whom the Appellants are in contact.

13. I find that the second Appellant has no relationship with his father.

14. With reference to the factors set out in paragraph 35 of EV Philippines, I find that the second Appellant is almost nine years old and has lived in the United Kingdom for all of his life. He has been at primary school here since he was four years old. I find that he has never been to Nigeria. I find that, owing to the family rift, he has no contact with Nigeria. His only connection with Nigeria is through his mother. I find that his mother has returned to Nigeria once since his birth when she tried to heal the family rift. She was unsuccessful and her father has nothing to do with his wife or children as a result. The second Appellant speaks English. There is no evidence that he has any medical conditions. He is not a British citizen.

15. I find, taking into account the evidence above, including the exceptional circumstances surrounding the family rift, and the closer than usual relationship that the second Appellant has with his grandmother who was his main carer up until the age of three, as well as the fact that the second Appellant has no real connection with Nigeria, that it is in his best interests to remain in the United Kingdom and to maintain the relationships with his close family in the United Kingdom, as well as continuity of education.

16. I have found that it is in the best interests of the second Appellant remain in the United Kingdom. In assessing whether or not it is reasonable to expect him to leave the United Kingdom, I have taken into account the immigration history of his mother, the first Appellant.

17. I find that the first Appellant came to the United Kingdom in 2003 in order to study A-levels. On completion of her A-levels she went to Loughborough University, changing to Brighton University following the birth of the second Appellant. I find that she applied in time for leave to remain as a Tier 4 (Post study) Migrant in July 2011 when her leave to remain as a student expired. It is at this point that her immigration history becomes less straightforward. Her evidence is that she received no information from the Home Office regarding this application until 18 February 2012, despite chasing the Home Office for information. The application was rejected for failure to provide the correct level of funds. The first Appellant renewed the application on 22 February 2012. In the skeleton argument it states that this application is still outstanding, although in the first Appellant's witness statement she said that it was refused on 22 September 2012. In any event, I find that until this point the first Appellant had either leave to remain or an application pending with the Home Office.

18. At the hearing the first Appellant said that following the refusal received in February 2012, her solicitors remitted the old application with postal

orders for payment. In her witness statement she said that her legal representatives chased the Home Office as there was no response, and for this reason she submitted a family and private life application in July 2014. At the hearing she said that she did not know what had happened during the two years between September 2012 and July 2014. The July 2014 application was refused without a right of appeal in September 2014. On 25 November 2014, form IS151A was served on the Appellants generating a right of appeal.

19. I find on the balance of probabilities that the first Appellant has tried to rectify her immigration status following the rejection and refusal of the application as a Tier 1 (Post study) Migrant. I accept that there was a period of two years where it is unclear from the evidence what was happening in terms of attempts to rectify her status, but I find that for the majority of the time she has been in the United Kingdom with valid leave to remain.

20. I have also taken into account the financial circumstances of the Appellants. I find that the first Appellant was supported financially by her parents when she came to the United Kingdom to study. I find that, following the family rift, the Appellants have been financially supported by the first Appellant's mother. I find that they live in the family home which is owned by the first Appellant's mother. Evidence was provided that they have paid for private healthcare in the United Kingdom.

21. I find, taking into account all of the evidence, and my finding that it is in the best interests of the second Appellant to remain in the United Kingdom, that it is not reasonable to expect him to leave the United Kingdom. Accordingly I find on the balance of probabilities that the second Appellant meets the requirements of paragraph 276ADE(1)(iv).

22. It was not submitted before me that the first Appellant met the requirements of paragraph 276ADE(1)(vi), and I find on the balance of probabilities that the second Appellant cannot meet the requirements of the immigration rules.

Article 8 outside the immigration rules

23. I have considered the first Appellant's appeal under Article 8 outside of the immigration rules in accordance with the steps set out in Razgar [2004] UKHL 27. I find that she has family life with the second Appellant and I have found that he meets the requirements of the immigration rules. I find it is in his best interests to remain with his mother, and I therefore find that the decision would interfere with this family life. For the sake of completeness, given the family history as set out above, and the support that the first Appellant's mother has given to her, I find that the first Appellant's relationship with her mother goes above and beyond the bonds usually to be found between a mother and her adult daughter, and

that the first Appellant has a family life with her mother for the purposes of Article 8.

24. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.

25. In carrying out the proportionality assessment, I have taken into account the factors set out in section 117B of the 2002 Act insofar as they are relevant. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. I find the first Appellant can speak English (section 117B(2)). I find that she is financially supported by her mother in the United Kingdom (section 117B(3)). She has a degree in Social Science, and said at the hearing that this qualification would enable her to get employment fairly easily. Sections 117B(4) and (5) are not relevant.

26. The most relevant part of section 117B is subsection (6) which provides as follows:

> "In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
> (b) it would not be reasonable to expect the child to leave the United Kingdom."

The second Appellant is a "qualifying child" as defined in section 117D.

27. I have set out above, in relation to paragraph 276ADE(1)(iv), my finding that it is not reasonable to expect the second Appellant to leave the United Kingdom (paragraphs [6] to [21]). I therefore find that, as set out in section 117B(6), the public interest does not require the removal of the first Appellant. Accordingly, when carrying out the balancing exercise required in the proportionality assessment under Article 8, I find that the balance comes down in favour of the first Appellant. I find that she has shown on the balance of probabilities, at the date of the hearing, that the decision is a breach of her rights to a family life under Article 8 ECHR.

Decision

28. The appeal of the second Appellant is allowed under the immigration rules, paragraph 276ADE(1)(iv).

29. The appeal of the first Appellant is allowed on human rights grounds, Article 8.

No anonymity direction is made.

Signed Date 21 May 2016

Deputy Upper Tribunal Judge Chamberlain